

REMARKS

Reconsideration of the present application is requested. Claim 15 has been amended. This application includes 18 claims. Applicants appreciate the indication of allowable subject matter in dependent claims 11 and 12. In view of the following arguments, it is believed that the parent and intervening claims to claims 11 and 12 are themselves allowable. Consequently, Applicants have opted to retain these claims in their dependent form, but will amend them to make them independent if the present rejections are sustained.

Claim 15 has been amended to provide the correct indefinite article for the term "apparatus" in line 3. This amendment does not narrow the scope of the claim.

Claims 1-10 and 13-18 were rejected as anticipated by the patent of *Jaatinen* (U.S. No. 4,815,924). For a claim to be anticipated, a single reference must disclose, either literally or inherently, every element and limitation of the claim. For a limitation to be inherently disclosed:

it must be necessarily present and a person of ordinary skill in the art would recognize its presence. *In re Robertson*, 169 F. 3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999); *Continental Can*, 948 F.2d at 1268, 20 USPQ2d at 1749. Inherency "may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *Id.* at 1269, 20 USPQ2d at 1749 (quoting *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). *Crown Operations International Ltd. v. Solutia Inc.*, 62 USPQ2d 1917, 1922 (fed. Cir. 2002)

Inherency is not a matter of probabilities or possibilities but necessity.

*Jaatinen* was cited as disclosing a loading apparatus including a pusher mechanism 7 and extension fork assembly 8, 10, 11, 12, 13. It is respectfully suggested that *Jaatinen* does not disclose all of the elements of Applicants' claims 1-10 and 13-18, so it cannot serve as an anticipatory reference. In fact, *Jaatinen* discloses very little about the "extension fork assembly" since the spacer strips 8, fixed track 10, strip carriage 11, downwards directed tongue 12 and groove 13 are all part of an intermediate table 5 (see *Jaatinen* Col. 2, ll. 40-60) described as an "intermediate table known in itself in the art". *Jaatinen*, Col. 1, ll. 42-43. *Jaatinen* does not disclose the intermediate table in sufficient

detail to determine if each element and limitation of the claims herein is present in the device disclosed in *Jaatinen*. Thus, the Examiner must be relying on inherency to establish the disclosure of that which is not literally disclosed regarding the intermediate table.

Turning now to independent claims 1, 14 and 15, the *Jaatinen* reference was applied as anticipatory. Claims 1 recites:

1. An apparatus for loading an article from a first conveyor section onto a pallet situated on a second conveyor section, comprising:
  - a pusher mechanism for pushing the article from the first conveyor section toward the pallet on the second conveyor section; and
  - an extension fork assembly including:
    - a stationary transfer surface between the first conveyor section and the second conveyor section configured to support the article as it is pushed by said pusher mechanism thereacross;
    - a number of elongated forks configured to support the article as it is pushed by said pusher mechanism thereacross; and
    - a drive mechanism connected to said number of forks and operable to move said number of forks between a retracted position adjacent said stationary transfer surface and an extended position adjacent the pallet on the second conveyor section.

Initially, it should be noted that *Jaatinen* does not disclose a first conveyor, a second conveyor or a pallet as recited in claim 1. *Jaatinen* discloses a saw table 2, and a lifting table located at a stacking station 4. While the stacking station 4 includes parallel transport rolls 14 thereon, there is no indication that a pallet is placed thereon. The saw table clearly does not convey the stacks anywhere (the stacks are conveyed off of the saw table by the pusher means 7 of the feed means 3) so the saw table to not serve as a first conveyor. *Jaatinen* discloses that after the stacking is completed, "the completed stack is transported away from the lifting table, e.g. to partial stack and packing lines." *Jaatinen*, Col. 3, ll. 12-15.

Additionally, *Jaatinen* does not disclose the drive mechanism connected to said number of forks as recited in claim 1. *Jaatinen* states that:

. . . the spacer strips are pushed on top of the stack on the lifting table, and left between the stack and the package as the package is conveyed onto the stack.

The actual setting of a sheet package onto a stack takes place when spacer strips are pulled back into the grooves of the intermediate table at the same time as a comb-like stop, lowered earlier at the stacking edge and moving in intercalation with reference to the spacer strips, prevents the package from moving backwards. *Jaatinen*, Col. 1, l. 65- Col. 2, l. 7.

and

... whereafter the pusher means 7 stops and the strip carriage 11 pushes the spacer strips 8 from beneath the sheet package 1 on the intermediate table 5 to the lifting table 4, whereafter the pusher means 7 pushes the sheet package 1 onto the spacer strips 8 on the stack. When the pusher means 7 has stopped, after its first movement during such operation a pusher (dash and dot lines), which is comb-like at the lower end, descends somewhat downwards, in intercalation with the strips 8, and serves as a stop when the spacer strips 8 are pulled back to after each completed cycle, the intermediate table 5. The lifting table of the stacking station 4 is lowered, and the next sheet package may be displaced onto the stack. Stacking is continued until the stack is complete. Thereafter, the completed stack is transported away from the lifting table, e.g. to partial stack and packing lines. *Jaatinen*, Col. 2, l. 68- Col 3, l. 10.

While from the above, it is clear that the support strips are "pushed" on top of the stack and "pulled back" there is no indication how this is performed. This could be just as easily performed by a human operator as by a "drive mechanism" as recited in claim 1. Thus a "drive mechanism" is not inherently disclosed by *Jaatinen*. Additionally, even if a drive mechanism is used to push and pull the support strips of *Jaatinen*, there is no indication that such drive mechanism is "connected to said number of forks" as recited in claim 1.

Consequently, the *Jaatinen* patent cannot anticipate claim 1 because it does not disclose every element set forth in that claim. Moreover, the Examiner has not carried the burden of establishing a prima facie case of obviousness as would be required to support an obviousness rejection. Thus applicant is under no duty to come forward with evidence to rebut such an obviousness rejection. Thus, claim 1 and its dependent claims are believed to be allowable over *Jaatinen* and the other art of record.

Claim 14 defines a system including the first and second conveyor sections with a transfer apparatus substantially as defined in claim 1. The explanations and arguments set forth above with respect to claim 1 apply with equal force to claim 14. Thus, it is

believed that claim 14 is allowable over *Jaatinen* and the other art of record.

Finally, independent claim 15 is a method claim that echoes the first conveyor, second conveyor and pallet limitations of claim 1. This claim includes the step of moving the article onto a apparatus disposed between the first and second conveyor sections. However, as explained above, the *Jaatinen* does not disclose first and second conveyor sections, as required by claim 15.

Additional limitations recited in dependent claims are not disclosed by *Jaatinen*. For instance, claim 13 requires that the elongated forks include a tapered free end. However, the *Jaatinen* no tapered free end, as required by claim 13.

Claims 16 and 17 of the present application define the upper surface of the number of elongated beams as being curved. In contrast, the transfer surface in *Jaatinen* is defined as consisting of "plastic coated square tubes paralleling the transport direction". Squares clearly are not curved, so the *Jaatinen* reference fails to anticipate these claims.

Claims 8-10 and 18 call for means for supporting the free end of each of the elongated forks. Claim 18 calls for a roller assembly supporting the free end of each of the elongated forks. No such means or roller assembly is disclosed in *Jaatinen*. It can also be pointed out that *Jaatinen* fails to disclose the vertical and horizontal roller arrangement defined in Applicants' claim 10.

Thus, *Jaatinen* cannot anticipate claims 8-10 because it fails to disclose every claimed element. Again, there is no suggestion or motivation in *Jaatinen* to provide these claimed elements, so the *Jaatinen* reference is inappropriate to anticipate or render obvious Applicants' invention defined in these claims.

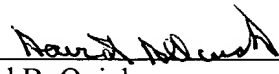
In view of the foregoing arguments it is believed that the present application, including claims 1-18, is in condition for allowance. The Examiner is invited to contact the undersigned agent if it is believed that a telephonic interview would be beneficial to iron out any outstanding issues. Action toward issuance of a Notice of Allowance in this case is earnestly solicited.

While applicant believes that this is a timely response filed within three months of

the mailing date of the office action addressed herein and thus no fee is due for this response, authorization is hereby provided to charge any additional fees required to Deposit Account No. 13-0014, but not to include any payment of issue fees.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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